

CHAPTER 36**TAXATION****ARTICLE I – FOREIGN FIRE INSURANCE TAX**

36-1-1 TAX ESTABLISHED. All corporations, companies and associations not incorporated under the laws of the State which are engaged, within the limits of the City, in writing fire insurance, shall pay annually to the Treasurer of the City, for the use and support of the fire department of the City, the sum of **two percent (2%)** of the gross receipts of their agencies in the City. All such corporations, companies and associations shall pay at the rate of **two percent (2%)** upon the gross amount of premiums, which shall have been received for any insurance effected or agreed to be effected, within the limits of the City during each year ending **July first (1st)** by each association or company, respectively. **(1965 Code; § 13-17)**

36-1-2 PERSONS ACTING AS AGENT, ETC., TO REPORT PREMIUMS. Every person who shall act, within the City, as agent or otherwise for or in behalf of any corporation, company or association as referred to in **Section 36-1-3** of this Code shall, on or before the **fifteenth (15th) day of July** each year, render to the City Clerk, a full, true, and just account, verified by affidavit, of all the premiums which shall have been reviewed by such agent for fire insurance during the year ending **July first (1st)**, preceding such report, in behalf of such corporation, company or association. **(1965 Code; § 13-18)**

36-1-3 PERSON ACTING AS AGENT TO MAKE PAYMENT OF TWO PERCENT (2%) OF GROSS RECEIPTS; COMPANIES IN DEFAULT NOT TO TRANSACT BUSINESS. Every person who shall act within the City as agent or otherwise for or in behalf of any corporation, company or association as referred to in **Section 36-1-2** of the Article, shall, on behalf of the corporation, company or association represented, pay annually to the City Treasurer, at the time of making the report referred to in **Section 36-1-2 two percent (2%)** of the gross receipts or premiums of his agency, for which the corporation, company or association represented by the person making such report is chargeable by virtue of this Article. If such account be not rendered on or before the day designated in this Article, or if the rate above fixed shall remain unpaid after that date, it shall be unlawful for such corporation, company or association, so in default, to transact any business within the limits of the City until the above requirements have been fully met; but this provision shall not relieve any such corporation, company or association from the payment of any risk taken in violation thereof. **(1965 Code; § 13-19)**

36-1-4 EFFECT OF FAILURE OF PERSON ACTING AS AGENT, ETC., TO MAKE REPORT OF PREMIUMS OR TO PAY SUMS DUE; EFFECTING CONTRACTS OF FIRE INSURANCE FOR NON-COMPLYING COMPANIES, ETC.

Any person acting as agent or otherwise for, or in behalf of any fire insurance company, corporation or association, as referred to in this Section, in effecting fire insurance within the limits of the City, who shall fail to make the report required in this Article, or fail to pay over the amount due from any such corporation, company or association at the time designated for that purpose, or who shall effect or attempt to effect any contract of fire insurance in behalf of any such corporation, company or association, which has not complied with the provisions of this Article, shall, upon conviction, be deemed guilty of a misdemeanor; provided, that any prosecution brought by the City to enforce the penalty for the violation of this Article shall not interfere with the rights of the City to recover, by appropriate action, the sum due the City, at the rate fixed in this Article, from any such corporation, company or association, its agents or representatives. **(1965 Code; § 13-20)**

ARTICLE II – GENERALLY

36-2-1 GARBAGE TAX. There shall be levied annually upon all the personal and real property within the corporate limits of the City, subject to taxation for each fiscal year, a tax not to exceed one mill on the dollar, according to the last valuation of the same as made for the purpose of State and County taxation by the last assessment in the City, which tax shall be levied for the purposes of establishing and maintaining a garbage system for the collection and disposal of garbage in the City. Garbage within the meaning of this Section, is any refuse accumulation of animal, fruit, or vegetable matter, liquid or otherwise, attending the preparation, use, cooking, dealing in or storing meat, fish, fowl, fruit, grain or vegetables. This definition of garbage is to receive a strict construction. The annual garbage tax shall be in addition to the amount authorized to be levied for general purposes as provided by **Illinois Compiled Statutes. (1965 Code; § 20-5)**

36-2-2 DISPOSITION OF FUNDS RECEIVED ON SPECIAL ASSESSMENTS. All moneys received on any special assessment shall be held by the Treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made, and such money shall be used for no other purpose whatsoever, unless to reimburse a corporation for money expended for such improvement. **(1965 Code; § 20-4)**

ARTICLE III – HOTEL/MOTEL TAX

36-3-1 DEFINITIONS. The terms "hotel" (which includes a motel), "operator", "occupancy", "room" or "rooms", "permanent resident", "rent" or "rental", "department", and "person" are hereby defined and shall have the meanings provided in **Section 145/2 of Chapter 35 of the Illinois Revised Statutes** as that Section may be in force from time to time.

The term "Treasurer" shall mean and refer to the City Treasurer.

The term "return" shall mean any return filed or required to be filed as provided in this Article.

36-3-2 TAX. There is hereby levied and imposed a tax of **four percent (4%)** of the gross rental receipts from the renting, leasing or letting of a hotel or motel room within the City for each **twenty-four (24) hour** period or any portion thereof for which a daily room charge is made; provided, however, that a tax shall not be levied or imposed on meeting rooms or upon any person who shall be a permanent resident. A permanent resident is hereby defined to be a person who rents a hotel or motel room in the same establishment for more than **thirty (30) consecutive days** or to a person who works and lives in the same hotel or motel.

Persons subject to the tax hereby imposed may reimburse themselves for their tax liability for such tax by separately stating such tax as an additional charge, which charge may be stated in combination and in single amount with the state tax imposed under **"The Hotel Operators' Occupation Tax Act"** as provided in **Illinois Compiled Statutes, Chapter 35, Section 145/1 et seq.**

The tax herein levied and imposed shall be paid in addition to any and all other taxes and charges. It shall be the duty of the operator to pay the amount of the tax to the Treasurer under procedures prescribed by the Treasurer or as otherwise provided in this Article. **(Ord. No. 94-9; 04-26-94)**

36-3-3 RECORDS TO BE KEPT. Every operator shall keep records of every occupancy and of all rent paid, charged or due thereon and of the tax payable thereon in such form as may be required by regulation prescribed by the Treasurer or as otherwise provided in this Article. Such records shall be available for inspection and examination for any proper purpose at any reasonable time upon demand by the Treasurer or a duly authorized agent or employee of the City and shall be preserved for a period of **three (3) years** unless the Treasurer shall prescribe a shorter period of time. It shall be unlawful for any person to prevent, hinder, or interfere with the Treasurer or the duly authorized deputy or representative of the Treasurer in the discharge of the duties of the Treasurer.

36-3-4 RETURNS. Every operator shall file monthly with the Treasurer a return of occupancy and of the rents and of the taxes payable thereon on forms prescribed by the Treasurer and consistent with returns required under the Hotel Operators' Occupation Tax Act found in Chapter 35, Section 145/ et seq. The return shall be due on or before the **thirtieth (30th) day** of the calendar month succeeding the end of the month filing period. A separate return shall be filed for each place of business within the City regardless of ownership.

The first taxing period for the purpose of this Article shall commence on April 1, 1991, and the tax return and payment for such period shall be due on or before May 30, 1991. Thereafter, reporting periods and tax payments shall be in accordance with the provisions of this Article. At the time of filing such tax returns, the operator shall pay the full amount of all tax due hereunder less a discount of 2.1% of said tax or Twenty-Five Dollars (\$25.00) per calendar year, whichever is greater, which is allowed to reimburse the operator for the expenses incurred in keeping records, preparing and filing returns, and remitting the tax and supplying data to the Treasurer.

If for any reason any tax is not paid when due, a penalty at the rate of **one percent (1%)** per **thirty (30) day** period or portion thereof from the date of delinquency shall be added and collected.

36-3-5 COLLECTION. Whenever any person shall fail to pay any tax due hereunder or penalty, the Treasurer shall bring or cause to be brought in the name of the City an action to enforce payment of the tax in any court of competent jurisdiction, together with the costs of such collection.

36-3-6 PROCEEDS OF TAXES. All proceeds resulting from the imposition of the tax hereunder, including penalties, shall be paid into the Treasury of the City and shall be credited to and deposited in the corporate funds of the City. All such proceeds shall be separately accounted for the Treasurer.

36-3-7 USE OF FUNDS. All taxes and penalties received by the City hereunder shall be expended by the City solely to promote tourism, conventions and other special events within the City and otherwise to attract nonresidents to visit the City.

36-3-8 VIOLATION. If any person shall violate the provisions of this Article in addition to any and all other penalties provided herein shall upon conviction thereof be fined not less than **One Hundred Dollars (\$100.00)** nor more than **Five Hundred Dollars (\$500.00)** and a separate offense shall be deemed to have been committed upon each day in which such violation occurs or continues.

[Unless Otherwise Noted, This Article Ord. No. 91-3; 03-12-91]

ARTICLE IV – HOME RULE MUNICIPAL RETAILERS' OCCUPATION TAX

36-4-1 TAX IMPOSED/RATE OF TAX. A tax is imposed upon all persons engaged in the business of selling tangible personal property at retail in the City. Effective **July 1, 2010**, the tax imposed by this Section shall be at the rate of **two percent (2%)** of the gross receipts from such sales made in the course of such business.

36-4-2 PERSONAL PROPERTY EXCEPTED FROM TAX. The tax imposed by **Section 36-4-1** shall not apply to the sale of an item of tangible property titled or registered with an agency of the government of the State of Illinois and to the sale of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

36-4-3 COLLECTION AND ENFORCEMENT. The tax imposed by **Section 36-4-1** and all civil penalties that may be assessed as an incident thereto shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have the full power to administer and enforce the provisions of this Article.

(Ord. No. 10-05; 03-11-10)

ARTICLE V – HOME RULE MUNICIPAL SERVICE OCCUPATION TAX

36-5-1 TAX IMPOSED/RATE OF TAX. A tax is imposed upon all persons engaged in the business of making sales of service in the City. Effective **July 1, 2010**, the tax imposed by this Section shall be at the rate of **two percent (2%)** of the selling price of all tangible property transferred by such servicemen either in the form of tangible personal property or in the form of real estate as an incident to a sale of service.

36-5-2 PERSONAL PROPERTY EXCEPTED FROM TAX. The tax imposed by **Section 36-5-1** shall not apply to the sales of food for human consumption which is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks and food which has been prepared for immediate consumption) and prescription and non-prescription medicines, drugs, medical appliances and insulin, urine testing materials, syringes and needles used by diabetics.

36-5-3 COLLECTION AND ENFORCEMENT. The tax imposed by **Section 36-5-1** and all civil penalties that may be assessed as an incident thereto shall be collected and enforced by the Department of Revenue of the State of Illinois. The Department of Revenue shall have the full power to administer and enforce the provisions of this Article.

(Ord. No. 10-05; 03-11-10)

ARTICLE VI

TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

36-6-1 **DEFINITIONS.** As used in this Article, the following terms shall have the following meanings:

(A) **"Gross Charges"** means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the City, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the City, charges for the channel mileage between each channel point within the City, and charges for that portion of the interstate inter-office channel provided within the City. However, "gross charges" shall not include:

- (1) any amounts added to a purchaser's bill because of a charge made under:
 - (a) the fee imposed by this Section,
 - (b) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act,
 - (c) amounts collected under Section 8-11-17 of the Illinois Municipal Code,
 - (d) the tax imposed by the Telecommunications Excise Tax Act,
 - (e) 911 surcharges, or
 - (f) the tax imposed by Section 4251 of the Internal Revenue Code;
- (2) charges for a sent collect telecommunication received outside the City;
- (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

- (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the City;
- (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries, and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;
- (7) bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) charges paid by inserting coins in coin-operated telecommunications devices; or
- (9) charges for telecommunications and all services and equipment provided to the City.

(B) **"Public Right-of-Way"** means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the City has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

(C) **"Retailer maintaining a place of business in this State"**, or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

(D) **"Sale of telecommunications at retail"** means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

(E) **"Service address"** means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

(F) **"Telecommunications"** includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value-added services in which computer-processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. "Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provisions and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable service through a cable system as defined in the Cable Communications Act of 1984 (47 U.S.C. Section 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

(G) **"Telecommunications provider"** means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

(H) **"Telecommunications retailer" or "retailer" or "carrier"** means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The City may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the City, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business in the City.

(I) **"Wireless telecommunications"** includes cellular mobile services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104), 42 U.S.C. §331(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services.

36-6-2 REGISTRATION OF TELECOMMUNICATIONS PROVIDERS.

(A) Every telecommunications provider as defined by this Article shall register with the City within **thirty (30) days** after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the City, provided, however, that any telecommunications retailer that has filed a return pursuant to **Section 36-2-4(C)** of this Article shall be deemed to have registered in accordance with this Section.

(B) Every telecommunications provider who has registered with the City pursuant to **Section 36-2-2(A)** has an affirmative duty to submit an amended registration form or current return as required by **Section 36-2-4(C)**, as the case may be, to the City within **thirty (30) days** from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the City.

36-6-3 MUNICIPAL TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.

(A) A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of **one percent (1%)** of all gross charges charged by the telecommunications retailers to service addresses within the City for telecommunications originating or received in the City.

(B) Upon the effective date of the infrastructure maintenance fee authorized in this Article, the City infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the City by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

(C) The City telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in **Section 36-2-4** of this Article.

36-6-4 COLLECTION, ENFORCEMENT, AND ADMINISTRATION OF TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEES.

(A) A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the City infrastructure maintenance fee attributable to that customer's service address.

(B) Unless otherwise approved by the City the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the City not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed **two percent (2%)** of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

(C) Remittance of the municipal infrastructure fee to the City shall be accompanied by a return, in a form to be prescribed by the City, which shall contain such information as the City may reasonably require.

(D) Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunications retailer shall constitute a debt owed by the telecommunications retailer to the City. The charge imposed under **Section 36-2-4(A)** by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

(E) If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the City may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than **three (3) years** after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the City within the applicable statutory period of limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

(F) Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

- (1) **"gross charges"** for purposes of the Telecommunications Excise Tax Act;
- (2) **"gross receipts"** for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code;
- (3) **"gross charges"** for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code;
- (4) **"gross revenue"** for purposes of the tax on annual gross revenue of public utilities in Section 2-202 of the Public Utilities Act.

(G) The City shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunications retailer has properly accounted to the City for the City infrastructure maintenance fee. Any underpayment of the amount of the City infrastructure maintenance fee due to the City by the telecommunications retailer shall be paid to the City plus **five percent (5%)** of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit, in an amount not to exceed **five percent (5%)** of the total amount of the underpayment determined in an audit. Said sum shall be paid to the City within **twenty-one (21) days** after the date of issuance of an invoice for same.

(H) The City or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Article consistent with its provisions, as may be required from time to time and shall notify all telecommunications retailers that are registered pursuant to **Section 36-2-2** of this Article of such regulations.

36-6-5 COMPLIANCE WITH OTHER LAWS. Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- (A) generally applicable taxes; and
- (B) standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- (C) Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (D) Compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way.

36-6-6 EXISTING FRANCHISES AND LICENSES. Any franchise, license, or similar agreements between telecommunications retailers and the City entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived.

36-6-7 PENALTIES. Any telecommunications provider who violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this Article shall be subject to fine in accordance with the general penalty provisions of the City Municipal Code.

36-6-8 ENFORCEMENT. Nothing in this Article shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Article.

36-6-9 WAIVER AND FEE IMPLEMENTATION.

(A) The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the Telecommunications

Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Article is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

(B) The City Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the City has a franchise.

(C) The City infrastructure maintenance fee provided for in this Article shall become effective and imposed on the **first (1st) day** of the month not less than **ninety (90) days** after the City provides written notice by certified mail to each telecommunications retailer with whom the City has an existing franchise, license, or similar agreement that the City waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the City. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

[ED. NOTE: This Ordinance was moved to the Taxation chapter to retain the alphabetical order of the Code and to locate the law with parallel topics.]

(Ord. No. 97-17; 10-14-97)

ARTICLE VII

TAXPAYERS' RIGHTS CODE

36-7-1 **TITLE.** This Article shall be known as, and may be cited as, the "Locally Imposed and Administered Tax Rights and Responsibility Code".

36-7-2 **SCOPE.** The provisions of this Code shall apply to the City's procedures in connection with all of the City's locally imposed and administered taxes.

36-7-3 **DEFINITIONS.** Certain words or terms herein shall have the meaning ascribed to them as follows:

(A) **Act.** "Act" means the "Local Government Taxpayers' Bill of Rights Act".

(B) **Corporate Authorities.** "Corporate Authorities" means the City's Mayor and City Council.

(C) **Locally Imposed and Administered Tax or "Tax".** "Locally Imposed and Administered Tax" or "Tax" means each tax imposed by the City that is collected or administered by the City not an agency or department of the State. It does not include any taxes imposed upon real property under the Property Tax Code or fees collected by the City other than infrastructure maintenance fees.

(D) **Local Tax Administrator.** "Local Tax Administrator", the City's Treasurer, is charged with the administration and collection of the locally imposed and administered taxes, including staff, employees or agents to the extent they are authorized by the local tax administrator to act in the local tax administrator's stead. The local tax administrator shall have the authority to implement the terms of this Code to give full effect to this Code. The exercise of such authority by the local tax administrator shall not be inconsistent with this Code and the Act.

(E) **City.** "City" means the City of Murphysboro, Illinois.

(F) **Notice.** "Notice" means each audit notice, collection notice or other similar notice or communication in connection with each of the City's locally imposed and administered taxes.

(G) **Tax Ordinance.** "Tax Ordinance" means each ordinance adopted by the City that imposes any locally imposed and administered tax.

(H) **Taxpayer.** "Taxpayer" means any person required to pay any locally imposed and administered tax and generally includes the person upon whom the legal incidence of such tax is placed and with respect to consumer taxes includes the business or entity required to collect and pay the locally imposed and administered tax to the City.

36-7-4 NOTICES. Unless otherwise provided, whenever notice is required to be given, the notice is to be in writing mailed not less than **seven (7) calendar days** prior to the day fixed for any applicable hearing, audit or other scheduled act of the local tax administrator. The notice shall be sent by the local tax administrator as follows:

- (A) First class or express mail, or overnight mail, addressed to the persons concerned at the persons' last known address, or
- (B) Personal service or delivery.

36-7-5 LATE PAYMENT. Any notice, payment, remittance or other filing required to be made to the City pursuant to any tax ordinance shall be considered late unless it is:

- (A) physically received by the City on or before the due date, or
- (B) received in an envelope or other container displaying a valid, readable U.S. postmark dated on or before the due date, properly addressed to the City, with adequate postage prepaid.

36-7-6 PAYMENT. Any payment or remittance received for a tax period shall be applied in the following order:

- (A) first to the tax due for the applicable period;
- (B) second to the interest due for the applicable period; and
- (C) third to the penalty for the applicable period.

36-7-7 CERTAIN CREDITS AND REFUNDS.

(A) The City shall not refund or credit any taxes voluntarily paid without written protest at the time of payment in the event that a locally imposed and administered tax is declared invalidly enacted or unconstitutional by a court of competent jurisdiction. However, a taxpayer shall not be deemed to have paid the tax voluntarily if the taxpayer lacked knowledge of the facts upon which to protest the taxes at the time of payment or if the taxpayer paid the taxes under duress.

(B) The statute of limitations on a claim for credit or refund shall be **four (4)** or less years after the end of the calendar year in which payment in error was made. The City shall not grant a credit or refund of locally imposed and administered taxes, interest, or penalties to a person who has not paid the amounts directly to the City.

(C) The procedure for claiming a credit or refund of locally imposed and administered taxes, interest or penalties paid in error shall be as follows:

- (1) The taxpayer shall submit to the local tax administrator in writing a claim for credit or refund together with a statement specifying:
 - (a) the name of the locally imposed and administered tax subject to the claim;

- (b) the tax period for the locally imposed and administered tax subject to the claim;
 - (c) the date of the tax payment subject to the claim and the cancelled check or receipt for the payment;
 - (d) the taxpayer's recalculation, accompanied by an amended or revised tax return, in connection with the claim; and
 - (e) a request for either a refund or a credit in connection with the claim to be applied to the amount of tax, interest and penalties overpaid, and, as applicable, related interest on the amount overpaid; provided, however, that there shall be no refund and only a credit given in the event the taxpayer owes any monies to the City.
- (2) Within **ten (10) days** of the receipt by the local tax administrator of any claim for a refund or credit, the local tax administrator shall either:
- (a) grant the claim; or
 - (b) deny the claim, in whole or in part, together with a statement as to the reason for the denial or the partial grant and denial.
- (3) In the event the local tax administrator grants, in whole or in part, a claim for refund or credit, the amount of the grant for refund or credit shall bear interest at the rate of **six percent (6%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed, from the date of the overpayment to the date of mailing of a refund check or the grant of a credit.

36-7-8 AUDIT PROCEDURE. Any request for proposed audit pursuant to any local administered tax shall comply with the notice requirements of this Code.

- (A) Each notice of audit shall contain the following information:
- (1) the tax;
 - (2) the time period of the audit; and
 - (3) a brief description of the books and records to be made available for the auditor.
- (B) Any audit shall be conducted during normal business hours and if the date and time selected by the local tax administrator is not agreeable to the taxpayer, another date and time may be requested by the taxpayer within **thirty (30) days** after the originally designated audit and during normal business hours.
- (C) The taxpayer may request an extension of time to have an audit conducted. The audit shall be conducted not less than **seven (7) days** nor more than **thirty (30) days** from the date the notice is given, unless the taxpayer and the local tax administrator agreed to some other convenient time. In the event taxpayer is unable to comply with the

audit on the date in question, the taxpayer may request another date within the **thirty (30) days**, approved in writing, that is convenient to the taxpayer and the local tax administrator.

(D) Every taxpayer shall keep accurate books and records of the taxpayer's business or activities, including original source documents and books of entry denoting the transactions which had given rise or may have given rise to any tax liability, exemption or deduction. All books shall be kept in the English Language and shall be subject to and available for inspection by the City.

(E) It is the duty and responsibility of every taxpayer to make available its books and records for inspection by the City. If the taxpayer or tax collector fails to provide the documents necessary for audit within the time provided, the local tax administrator may issue a tax determination and assessment based on the tax administrator's determination of the best estimate of the taxpayer's tax liability.

(F) If an audit determines there has been an overpayment of a locally imposed and administered tax as a result of the audit, written notice of the amount of overpayment shall be given to the taxpayer within **thirty (30) days** of the City's determination of the amount of overpayment.

(G) In the event a tax payment was submitted to the incorrect local governmental entity, the local tax administrator shall notify the local governmental entity imposing such tax.

36-7-9 APPEAL.

(A) The local tax administrator shall send written notice to a taxpayer upon the local tax administrator's issuance of a protestable notice of tax due, a bill, a claim denial, or a notice of claim reduction regarding any tax. The notice shall include the following information:

- (1) the reason for the assessment;
- (2) the amount of the tax liability proposed;
- (3) the procedure for appealing the assessment; and
- (4) the obligations of the City during the audit, appeal, refund and collection process.

(B) A taxpayer who receives written notice from the local tax administrator of a determination of tax due or assessment may file with the local tax administrator a written protest and petition for hearing, setting forth the basis of the taxpayer's request for a hearing. The written protest and petition for hearing must be filed with the local tax administrator within **forty-five (45) days** of receipt of the written notice of the tax determination and assessment.

(C) If a timely written notice and petition for hearing is filed, the local tax administrator shall fix the time and place for hearing and shall give written notice to the taxpayer. The hearing shall be scheduled for a date within **fourteen (14) days** of receipt of the written protest and petition for hearing, unless the taxpayer requests a later date convenient to all parties.

(D) If a written protest and petition for hearing is not filed within the **forty-five (45) day** period, the tax determination, audit or assessment shall become a final bill due and owing without further notice.

(E) Upon the showing of reasonable cause by the taxpayer and the full payment of the contested tax liability along with interest accrued as of the due date of the tax, the local tax administrator may reopen or extend the time for filing a written protest and petition for hearing. In no event shall the time for filing a written protest and petition for hearing be reopened or extended for more than **ninety (90) days** after the expiration of the **forty-five (45) day** period.

36-7-10 HEARING.

(A) Whenever a taxpayer or a tax collector has filed a timely written protest and petition for hearing under **Section 36-7-9**, above, the local tax administrator shall conduct a hearing regarding any appeal.

(B) No continuances shall be granted except in cases where a continuance is absolutely necessary to protect the rights of the taxpayer. Lack of preparation shall not be grounds for a continuance. Any continuance granted shall not exceed **fourteen (14) days**.

(C) At the hearing the local tax administrator shall preside and shall hear testimony and accept any evidence relevant to the tax determination, audit or assessment. The strict rules of evidence applicable to judicial proceedings shall not apply.

(D) At the conclusion of the hearing, the local tax administrator shall make a written determination on the basis of the evidence presented at the hearing. The taxpayer or tax collector shall be provided with a copy of the written decision.

36-7-11 INTEREST AND PENALTIES. In the event a determination has been made that a tax is due and owing, through audit, assessment or other bill sent, the tax must be paid within the time frame otherwise indicated.

(A) **Interest.** The City hereby provides for the amount of interest to be assessed on a late payment, underpayment, or nonpayment of the tax to be **five percent (5%)** per annum, based on a year of **three hundred sixty-five (365) days** and the number of days elapsed.

(B) **Late Filing and Payment Penalties.** If a tax return is not filed within the time and manner provided by the controlling tax ordinance, a late filing penalty, of **five percent (5%)** of the amount of tax required to be shown as due on a return shall be imposed; and a late payment penalty of **five percent (5%)** of the tax due shall be imposed. If no return is filed within the time or manner provided by the controlling tax ordinance and prior to the City issuing a notice of tax delinquency or notice of tax liability, then a failure to file penalty shall be assessed equal to **ten percent (10%)** of the total tax due for the applicable reporting period for which the return was required to be filed. A late filing or payment penalty shall not apply if a failure to file penalty is imposed by the controlling ordinance.

36-7-12 ABATEMENT. The local tax administrator shall have the authority to waive or abate any late filing penalty, late payment penalty or failure to file penalty if the local tax administrator shall determine reasonable cause exists for delay or failure to make a filing.

36-7-13 INSTALLMENT CONTRACTS. The City may enter into an installment contract with the taxpayer for the payment of taxes under the controlling tax ordinance. The local tax administrator may not cancel any installment contract so entered unless the taxpayer fails to pay any amount due and owing. Upon written notice by the local tax administrator that the payment is **thirty (30) days** delinquent, the taxpayer shall have **fourteen (14) working days** to cure any delinquency. If the taxpayer fails to cure the delinquency within the **fourteen (14) day** period or fails to demonstrate good faith in restructuring the installment contract with the local administrator, the installment contract shall be canceled without further notice to the taxpayer.

36-7-14 STATUTE OF LIMITATIONS. The City, through the local tax administrator, shall review all tax returns in a prompt and timely manner and inform taxpayers of any amounts due and owing. The taxpayer shall have **forty-five (45) days** after receiving notice of the reviewed tax returns to make any request for refund or provide any tax still due and owing.

(A) No determination of tax due and owing may be issued more than **four (4) years** maximum after the end of the calendar year for which the return for the applicable period was filed or for the calendar year in which the return for the applicable period was due, whichever occurs later.

(B) If any tax return is not filed or if during any **four (4) year** period for which a notice of tax determination or assessment may be issued by the City, the tax paid was less than **seventy-five percent (75%)** of the tax due, the statute of limitations shall be **six (6) years** maximum after the end of the calendar year in which return for the applicable period was due or end of the calendar year in which the return for the applicable period was filed.

(C) No statute of limitations shall not apply if a fraudulent tax return was filed by the taxpayer.

36-7-15 VOLUNTARY DISCLOSURE. For any locally imposed and administered tax for which a taxpayer has not received a written notice of an audit, investigation, or assessment from the local tax administrator, a taxpayer is entitled to file an application with the local tax administrator for a voluntary disclosure of the tax due. A taxpayer filing a voluntary disclosure application must agree to pay the amount of tax due, along with interest of **one percent (1%)** per month, for all periods prior to the filing of the application but not more than **four (4) years** before the date of filing the application. A taxpayer filing a valid voluntary disclosure application may not be liable for any additional tax, interest, or penalty for any period before the date the application was filed. However, if

the taxpayer incorrectly determined and underpaid the amount of tax due, the taxpayer is liable for the underpaid tax along with applicable interest on the underpaid tax, unless the underpayment was the result of fraud on the part of the taxpayer, in which case the application shall be deemed invalid and void. The payment of tax and interest must be made by no later than **ninety (90) days** after the filing of the voluntary disclosure application or the date agreed to by the local tax administrator. However, any additional amounts owed as a result of an underpayment of tax and interest previously paid under this Section must be paid within **ninety (90) days** after a final determination and the exhaustion of all appeals of the additional amount owed or the date agreed to by the local tax administrator, whichever is longer.

36-7-16 PUBLICATION OF TAX ORDINANCES. Any locally administered tax ordinance shall be published via normal or standard publishing requirements. The posting of a tax ordinance on the Internet shall satisfy the publication requirements. Copies of all tax ordinances shall be made available to the public upon request at the City Clerk's office.

36-7-17 INTERNAL REVIEW PROCEDURE. The local tax administrator shall establish an internal review procedure regarding any liens filed against any taxpayers for unpaid taxes. Upon a determination by the local tax administrator that the lien is valid, the lien shall remain in full force and effect. If the lien is determined to be improper, the local tax administrator shall:

- (A) timely remove the lien at the City's expense;
- (B) correct the taxpayer's credit record; and
- (C) correct any public disclosure of the improperly imposed lien.

36-7-18 APPLICATION. This Ordinance shall be liberally construed and administered to supplement all of the City's tax ordinances. To the extent that any tax ordinance is in conflict with or inconsistent with this ordinance, this ordinance shall be controlling.

(Ord. No. 00-31; 12-11-00)

ARTICLE VIII – HOME RULE MUNICIPAL MOTOR FUEL TAX

36-8-1 DEFINITIONS. For the purpose of this Article, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed to them in this Section:

Bulk User: Any person who purchases motor fuel for storage in bulk storage facilities located within the City, which facilities are owned, leased or controlled by said person, for subsequent dispensing into the supply tanks of vehicles with internal combustion engines operated by said person.

Gasohol: A fuel used chiefly in internal combustion engines which is comprised chiefly of gasoline or ethyl alcohols in variable quantities.

Gasoline or Diesel Fuel: A volatile, highly flammable or combustible, liquid mixture of hydrocarbons produced by the fractional distillation of petroleum and used chiefly as a fuel in internal combustion engines, but shall not include mixtures commonly known as kerosene and aviation fuel, or mixtures used in the heating of buildings.

Motor Fuel: "Gasohol" and "gasoline" and "diesel fuel" as defined in this Section.

Person: Any natural person, trustee, court appointed representative, syndicate, association, partnership, firm, club, company, corporation, business trust, institution, agency, contractor, supplier, vendor, vendee, operator, user or owner, or any officers, agents, employees, or other representative, acting either for himself or for any other person in any capacity, or any other entity recognized by law as the subject of rights and duties.

Retail Motor Fuel Dealer: Any person who engages in the business of selling motor fuel in the City to a purchaser for use or consumption and not for resale in any form.

Sale, Resale, Selling: Any transfer of ownership or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for valuable consideration.

36-8-2 TAX IMPOSED/RATE OF TAX.

(A) There is hereby levied and imposed upon the purchase of each gallon of motor fuel, or fraction thereof sold at retail within the corporate limits of the City, a tax at the rate of **Two Cents (\$0.02)** per gallon. The proceeds resulting from the imposition of this **Two Cent (\$0.02)** tax, including penalties, shall be credited to and deposited in the General Corporate Fund of the City.

(B) In the event motor fuel is dispensed in a unit of measure other than the gallon, the tax shall be imposed at the same ratio to **Two Cents (\$0.02)** as the unit is to the gallon. The tax shall be paid in addition to any and all other taxes and charges.

(C) The ultimate incidence of any liability for payment of the tax is to be borne by the retail purchaser of motor fuel. Nothing in this Article shall be construed to impose a tax upon the occupations of persons engaged in the retail sale of motor fuel.

(D) It shall be the duty of every retail motor fuel dealer to secure the tax from the purchaser at the time the dealer collects purchase price for the motor fuel and to pay over the tax to the City as provided in this Article.

(E) A retail motor fuel dealer may make tax free sales only when the sale is made to the Federal government, the State of Illinois, any municipality or unit of local government as those terms are defined by Section One of Chapter VII of the Constitution of the State of Illinois, or any school district.

36-8-3 TAX AND REPORT TRANSMITTAL.

(A) Every motor fuel retailer shall transmit to the City Administrator of the City on or before the last day of each calendar month, the sum of money equal to the amount of motor fuel tax collected for the preceding calendar month, accompanied by a report upon forms supplied by the City, which indicates the gross gallons of motor fuel sold for the preceding calendar month and such other information as the City Administrator may require for the enforcement of this Article.

(B) Every motor fuel retailer shall submit with the report required by the City a copy of the retailer's Illinois Department of Revenue Occupational Tax Return Form ST-1, including the Worksheet on the reverse side, for the corresponding period that falls within the reporting period to the City required hereunder.

(C) Every bulk user shall transmit to the City Administrator on or before the last day of each calendar month a sum of money equal to the amount of motor fuel tax owing for the preceding calendar month, accompanied by a report upon forms supplied by the City, which indicate the gross gallons of motor fuel purchased for the preceding calendar month and such other information as the City Administrator may require for the enforcement of this Article.

36-8-4 RECORDS, INSPECTION.

(A) Every retail motor fuel dealer shall keep complete and accurate books and records, including but not limited to records showing all purchases, receipts, sales and losses through any cause.

(B) Every bulk user shall keep complete and accurate records of purchases of motor fuel, including the dates of purchases, the gross gallons purchased on each of the dates and the names and addresses of the motor fuel dealers from which each of the purchases were made.

(C) For the purpose of administering and enforcing this Article, the City shall have the right to inspect all books, records, and reports of retail motor fuel dealers and bulk users during their normal business hours.

36-8-5 PENALTY.

(A) Any person who violates any provision of this Article shall be punishable by a fine of not less than **One Hundred Dollars (\$100.00)** nor more than **Seven Hundred Fifty Dollars (\$750.00)**. Each day during which the violation continues shall be regarded as a separate punishable offense.

(B) If for any reason the tax is not paid when due, a penalty of **one and one-half percent (1.5%)** per month on the amount of tax which remains unpaid shall be added and collected. Whenever any person shall fail to pay the tax as provided herein, an action to enforce the payment shall be brought on behalf of the City in any court of competent jurisdiction to enforce this Article and collect any delinquent tax, interest and penalties.

36-8-6 REVOCATION OF LICENSE. Any license issued pursuant to **Chapter 7, Schedule A(6)** of the City Code shall be revoked in the event the motor fuel retailer fails to pay the tax required hereunder, fails to file the report with supporting Illinois Department of Revenue Occupational Tax Return Form ST-1 required hereby, or fails to permit the inspection of books and records when requested by the City.

(Ord. No. 09-09; 04-14-09)